

Service Date: September 30, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of )	TRANSPORTATION DIVISION
Montana Rail Link, Inc., Missoula, )	
Montana, to Discontinue its Agency )	
Operations at Paradise/Plains, )	DOCKET NO. T-9190
Montana and to Dispose of the Depot )	
Facilities. )	ORDER NO. 5879

\* \* \* \* \*

FINAL ORDER

\* \* \* \* \*

APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald & Lind, 201 West  
Main, Missoula, Montana 59802

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue,  
Helena, Montana 59620-2601

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner

## BACKGROUND

On January 26, 1988, Montana Rail Link, Inc. (MRL or Applicant), of Missoula, Montana, filed an application with the Montana Public Service Commission (Commission) seeking authority to discontinue its agency operations at Paradise/Plains, Montana, and dispose of the depot.

Following issuance of proper notice, the Commission conducted a public hearing on April 20, 1988, in the VFW Club, Plains, Montana. The parties stipulated that the Commission could proceed to issue a final order in this matter.

## SUMMARY OF TESTIMONY

### Testimony of Applicant

Mr. Orson Murray, appeared and testified in support of the application. Mr. Murray is the Manager, Operations Specialist, in the operations department. Mr. Murray is responsible for the administrative aspects of the railroad as they interrelate to operations, which includes the oversight of agency operations. Mr. Murray sponsored the following exhibit:

Exhibit D:       A document which is a compilation of information concerning the number of cars shipped, the type of commodity, and the amounts shipped per month, for the years 1985, 1986 and 1987.

Mr. Murray described the derivation and significance of the numbers contained in Exhibit D. These figures are derived

through the computer system on the basis of input at the centralized billing stations. This particular document was prepared on request of the MRL by the Burlington Northern statistical department. The first page shows shipments received and forwarded during 1985 to be a total of 18 cars of various commodities that were received. The second sheet shows that in 1986, and again for various commodities, a total of three cars were received and forwarded. In 1987, four cars were received. Mr. Murray testified that to his knowledge, there had not been any traffic received or forwarded during 1988. The last page of Exhibit D shows that, on the basis of working days, the Paradise/Plains agency has provided approximately .072 cars per working day. Mr. Murray added that it was MRL's position that the Paradise/Plains agency was not profitable. However, on cross he could not provide any figures relating to the various expenses involved in maintaining the agency.

Mr. Murray testified that the current agent occupying the Paradise/Plains agency is located at Paradise, Montana, in the depot facility. The agent is also an employee of the Burlington Northern Railroad Company, and is stationed in Paradise to operate the water system.

Mr. Murray also offered a general description of agency functions on the MRL system. All agency functions are currently performed through the centralized agency located in Missoula, Montana. Mr. Murray stated that he was not aware of any problems for shippers which resulted from the MRL system whereby the agency function is actually handled in Missoula. Representatives of MRL routinely contact shippers to make sure that there are no problems.

Mr. Murray added that since MRL has been in operation the local agent in Paradise/Plains has not played any part in the traffic described by Exhibit D.

Mr. Thomas Arthur Jones, appeared and testified in support of the application. Mr. Jones is the Trainmaster for MRL in the Missoula terminal (and lines west), and resides in Hamilton, Montana. The responsibilities of this position include oversight of the agency operations at Paradise/Plains, Montana. As Trainmaster, Mr. Jones is the first line operating officer for the railroad, and is responsible for train and crew operations, safety, rule compliance, etc.

Service at Paradise/Plains is currently provided by a local train which is home-based, from Monday through Friday starting at 7:00 a.m. This service will not be impacted by the closing of the agency.

The agent at Paradise is the former BN agent, who was left in place to service the water system. Although the agent spends a large portion of his time servicing the water system, he occupies the depot now owned by MRL. The agent does not receive any compensation from MRL, but does answer the phone at the depot.

#### Testimony of Protestants

Mr. James T. Mular appeared and testified in opposition to the application. Mr. Mular is the State Legislative Director of the Transportation/Communications Union (TCU), and resides in Butte, Montana. According to Mr. Mular, the Transportation/Communications Union has an existing labor agreement with the Applicant which covers the scope of services that a rail agent performs with MRL.

Mr. Mular stated that he believes MRL has not complied with Section 69-14-202, MCA, which requires a successor railroad through a purchase to maintain and staff station facilities in Montana and to accept and receive freight by those agents. It

wasn't until a show cause order was issued by the Commission that MRL provided the service under Montana law. According to Mr. Mular, Section 69-14-708, MCA, requires railroads to maintain records of accidents involving animals killed along the rights-of-way at a station located in the county where the railroad operates, by filing the station locality with the county clerk and recorder.

Such filing must assure that a station agency maintains a book record of such accidents.

Mr. Mular noted that MRL alleges that the relief requested in this application is an effort to reduce the cost of transportation services. He asked whether or not the cost savings will pass on to the customer. Mr. Mular also added that the Applicant pleads opportunity cost savings without substantiating any impact of closure on profitability and savings.

Mr. Mular also questioned MRL's use of a BN employee as its agent. He pointed out that the record does not reflect that the agent travels to Plains on a scheduled basis, which is required under the terms of a prior Commission Order. Mr. Mular also argued that the Commission should order MRL to apply the protection contained in < 69-14-1001, MCA.

Mr. Rick Van Acken appeared and testified in opposition to the application. Mr. Van Acken is the legislative representative for the TCU, Lodge 43, in Missoula. Mr. Van Acken stated that in reality, the Paradise/Plains agency has already been abandoned, since no service is being provided by the agent. If the service is not there, shippers are not going to call the agency.

Mr. Van Acken added that he has spoken with the BN employee at Paradise, and was told that no duties are performed on behalf of MRL.

DISCUSSION, ANALYSIS AND FINDINGS

This Petition to close the Paradise/Plains agency is brought pursuant to 69-14-202, MCA, as amended by the 1987 Montana legislature. That statute reads in its entirety as follows:

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility.

MRL's predecessor maintained an agency at Paradise/Plains on January 1, 1987. Therefore, the only question to be considered is whether "public convenience and necessity" require that MRL continue to maintain the agency.

The term "public convenience and necessity" is not a formulaic standard, but rather must be determined from the facts in each case; the existing burdens on the railroad will be weighed against burdens that will be placed on shippers should the application be granted. It has always been the practice of this Commission that railroads should be allowed to practice economies

when the benefits therefrom outweigh inconvenience and loss of service to the public. No evidence of profitability for Paradise/Plains was submitted by MRL. Accordingly, MRL has failed to meet its burden in this regard, and the Commission finds the Paradise/Plains agency to be profitable. See Docket No. T-9187, Order No. 5867, Finding No. 51. In approving applications to close profitable agencies in the past, the Commission has noted that shipper testimony in such cases will be accorded great weight.

It is noteworthy that the application was not opposed by any shipper. Clearly, there is no evidence in this Docket indicating that public convenience and necessity require the daily presence of a resident agent at the Paradise/Plains agency. The only witnesses to testify in opposition to the application were Mr. Mular and Mr. Van Acken. They contended that MRL was in possible violation of certain aspects of Montana law. The Commission finds nothing in the statutes referred to (specifically Sections 69-14-202 and 69-14-708, MCA) that would require the maintenance of a railroad agency in the absence of a finding of public convenience and necessity. On the contrary, Section 69-14-202(2), MCA, requires the Commission to authorize closure of a railroad facility unless it finds from the evidence that public convenience and necessity require the facility. See e.g. Docket No. T-9187, Order No. 5867 (Darby station closure).

There is nothing in the record of this proceeding to

support a conclusion that public convenience and necessity require the maintenance of the Paradise/Plains agency.

Mr. Mular maintained that MRL was not providing service consistent with the terms of a prior Commission order governing the Plains/Paradise agency. There was no evidence presented by MRL that any service is being provided at Plains, Montana, by the MRL agent. MRL is directed to Order No. 5884, Docket No. T-9185 (Polson/Ronan Agency) concerning its obligations in this regard.

#### CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

3. No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.



4. Public Convenience and Necessity does not require the maintenance of the agency at Paradise/Plains, Montana.

5. The Commission concludes that Montana Rail Link may remove the Paradise/Plains depot. Prior to its disposal, MRL should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building.

The Commission directs Montana Rail Link to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Montana Rail Link's Petition to discontinue its agency and dispose of the depot facility at Paradise/Plains, Montana is Granted.

IT IS FURTHER ORDERED that the Montana Rail Link Company shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

Done and Dated this 30th day of September, 1988 by a vote of

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Carol Frasier  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.